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BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)

Rulemaking to Amend Part 1 and)
Part 21 of the Commission's Rules)
to Redesignate the 27.5 - 29.5 GHz)
Frequency Band and To Establish)
Rules and Policies For Local)
Multipoint Distribution Services)

CC Docket No. 92-297

Applications for Waiver of the)
Commission's Common Carrier Point-)
to-Point Microwave Radio)
Service Rules)

To: The Commission

PETITION FOR RECONSIDERATION

M3 Illinois Telecommunications Corp. ("M3") hereby requests that the Commission reconsider in part its Notice of Proposed Rulemaking, Order, Tentative Decision and Order On Reconsideration ("Notice"), FCC 92-538, released January 8, 1993, denying *inter alia* M3's applications¹ for authority to provide new video distribution service in the Aurora-Elgin and Lake County, Illinois areas. Notice at ¶¶ 53, 82. For the reasons set forth below, such portion of the Notice as affects M3's applications specifically should be reversed. M3 presented the Commission with compelling waiver requests which

¹ M3's applications to serve Aurora-Elgin and Lake County were filed January 13, 1992 (File Nos. 9211503 and 9211505, respectively. Public Notice of the applications appeared February 5, 1992. Mutually-exclusive applications were filed by Silvia Rochelle (Aurora-Elgin) and BSV Partnership (Lake County) on April 6, 1992.

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the Commission omitted to consider, notwithstanding its duty to do so under well-established law.

**I. M3 Presented the FCC With
A Compelling Waiver Showing.**

As set forth in detail in its applications, M3's waiver proposal contains various features which distinguish it from scores of other 28 GHz applications. Most notably, the M3 proposal reflects a wholly local orientation. The majority of M3's principals are long-time residents of the planned service areas and are keenly aware of issues of concern to other local residents. Additionally, M3's principals have strong backgrounds and experience in finance, business, technology and communications -- areas of expertise which are vital for success in this nascent industry. M3 is further distinguished by its genuine financial ability to construct and operate the proposed systems. As a result of these factors, M3 is the very antithesis of a speculative venture. M3's applications are also unique in that they contain carefully developed schedules for the development and execution of various stages of their system implementation -- schedules which M3 is committed to honor in order to effectuate its 28 GHz plans at the earliest possible time. These and other features of M3's waiver requests described in its applications presented the FCC with a compelling showing that a grant of the waivers would serve the public interest.

**II. Controlling Precedent Conflicts With
the FCC's Denial of M3's Applications**

Clear instructions concerning the appropriate course for

the FCC to follow when presented with a waiver request were laid out over twenty years ago by the U.S. Court of Appeals. The Court directed that the FCC has a general duty to consider waivers of the rules as a matter of administrative due process.

[A]n application for waiver has an appropriate place in the discharge by an administrative agency of its assigned responsibilities. The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.

* * *

[A] system where regulations are maintained inflexibly without any procedure for waiver poses legal difficulties. The Commission is charged with administration in the 'public interest'...[w]hich includes an obligation to seek out the 'public interest' in particular, individualized cases.

WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

Applications presented "with clarity and accompanied by supporting data, are not subject to perfunctory treatment, but must be given a 'hard look'." WAIT Radio, 418 F.2d at 1156. Moreover, the FCC's analysis must be presented in an articulated rationale. Id.

In the Notice, the FCC denied all pending waiver requests on the theory that to grant them in toto "would amount to a de facto reallocation of the 28 GHz band," would be "inconsistent with the Commission's suggestion that it would not grant a flood of such requests," and "would be detrimental to the assigned users" of the spectrum. The Commission also stated that it "see[s] no basis for distinguishing among any of the individual requests in an equitable fashion." Id. at ¶ 53.

Petitioner does not dispute that a massive grant of hundreds of waiver requests would have been improper. At the same time, however, the Commission implicitly acknowledged that, had there been a way to differentiate specific waiver proposals from the others, such proposals would merit serious consideration.

M3's proposal is easily distinguishable from scores of other applications filed in this proceeding. We are aware of no other applicant for 28 GHz spectrum which presented a waiver proposal of this nature. Had the Commission adequately considered M3's proposal, we are confident that its virtues would have been immediately evident.

For these reasons, M3 asks that the FCC reconsider such portion of the Notice as denies its applications, that this reconsideration petition be granted, and that M3's waiver applications be granted expeditiously.

Respectfully submitted,

**M3 ILLINOIS TELECOMMUNICATIONS
CORP.**

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February 8, 1993

CERTIFICATE OF SERVICE

I, V. Frappier, hereby certify that I have, this 8th day of February, 1993, caused to be sent by U.S. first-class mail, postage-prepaid, a true and correct copy of the foregoing "Petition for Reconsideration" to the following:

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A handwritten signature in dark ink, appearing to read 'V. Frappier', is written over a horizontal line. The signature is stylized with a large, sweeping initial 'V' and a long, horizontal stroke extending to the right.